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BEFORE THE
Federal Communications Commission

WASHINGTON, D.C. 20554

ORIGINAL

In the Matter of)

Amendment to the Commission's)
Rules Regarding a Plan for Sharing)
The Costs of Microwave Relocation)

WT Docket No. 95-157

To: The Commission

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**COMMENTS
OF
WILLIAMS WIRELESS, INC.**

WILLIAMS WIRELESS, INC.

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**COMMENTS
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WILLIAMS WIRELESS, INC.**

Williams Wireless, Inc. ("WWI"), by its attorneys, pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("Commission"), respectfully submits these Comments in response to the Further Notice of Proposed Rule Making ("Further Notice") adopted by the Commission on April 25, 1996 in the above-captioned proceeding. As further discussed herein, WWI endorses the Commission's proposal to allow microwave incumbents to participate in the PCS cost-sharing plan recently adopted by the Commission, but opposes the Commission's proposal to shorten the voluntary negotiation period and lengthen the mandatory negotiation period for Personal Communications Services ("PCS") licensees in the C, D, E and F blocks.

I. SUMMARY

1. WWI fully supports the Commission's tentative conclusion that microwave incumbents who pay their own relocation costs should be permitted under the PCS cost-sharing plan to seek reimbursement from later-entrant PCS licensees that would have interfered with the relocated link(s). By providing microwave incumbents with an incentive to relocate their own systems, such a measure would further the Commission's goal of expediting the introduction of PCS licensees into the 2 GHz spectrum that has been reallocated for their use. In addition, conferring cost-sharing rights on microwave incumbents would promote the system-wide relocation of large networks in instances where the initial PCS relocater is only required to compensate the incumbent for a portion of the links in the incumbent's system.

2. WWI also recommends that, for purposes of the cost-sharing formula, the Commission treat microwave incumbents as if they were initial PCS relocators that have relocated non-interfering links that are fully outside their market area or licensed frequency band. Accordingly, incumbents should be entitled to obtain full reimbursement for the "actual costs" of relocation, subject to the same reimbursement cap that is applicable to PCS licensees under the cost-sharing plan adopted by the Commission. Under this approach, incumbents would have an incentive to minimize expenses associated with the relocation of their own systems.

3. WWI respectfully urges the Commission to reconsider its proposal to shorten the voluntary negotiation period by one year and to lengthen the mandatory negotiation period by one year for PCS licensees in the C block. The Commission's auction for C block licenses was recently completed; numerous parties participated in that auction under the assumption that negotiations for the relocation of microwave incumbents would be subject to a two-year voluntary period and a one-year mandatory period. There is simply no justification for changing the ground rules at this late juncture.

4. Likewise, with respect to PCS licensees in the D, E and F blocks, WWI opposes the Commission's plan to undo the negotiation schedule that it established in a prior proceeding after considerable deliberations. In light of the time consuming nature of voluntary negotiations and delays by the PCS industry in initiating and proceeding with voluntary negotiations, a shortening of the voluntary period to one year would virtually eliminate the protections that the Commission initially sought to provide incumbents when it established the voluntary period.

5. Should the Commission nonetheless determine that a shortening of the voluntary negotiation period to one year is warranted in the C, D, E and/or F blocks, WWI recommends that the voluntary period for a given relocation not commence until there has been a good faith, bona fide offer by the PCS licensee. Otherwise, a PCS licensee could essentially nullify the voluntary negotiation period by waiting until after

the one-year period has expired before making an offer of compensation to a microwave incumbent during the mandatory negotiation period.

II. BACKGROUND

6. WWI is a wholly-owned subsidiary of The Williams Companies, Inc. ("TWC"), Tulsa, Oklahoma. WWI operates as a subsidiary under The WilTech Group, Inc., which is wholly owned by TWC. TWC also owns Transcontinental Gas Pipeline Company ("Transco"), Texas Gas Transmission Company ("Texas Gas"), and Williams Natural Gas Company ("WNG"), among other companies.

7. WWI owns a 4,000 mile 2 GHz microwave system used by WNG, Texas Gas and Transco to control the operation of TWC's natural gas pipelines. Gas pressures and flow volumes are monitored and controlled by data transmissions at hundreds of points along the microwave system. In most cases, no other communications source is available. In addition, voice communications over the system are used to coordinate pipeline control operations.

8. The Transco pipeline extends from San Antonio, Texas to New York City. Its portion of WWI's microwave system passes through the Gulf states and up the East Coast. Texas Gas's pipeline runs north from New Orleans into Indiana. WNG's system operates throughout Oklahoma, Kansas and Missouri, with one segment extending into Wyoming.

9. This extensive communications system consists of 132 microwave links, all of which operate in either the A, B or C frequency blocks allocated for PCS. By voluntary agreement with American Personal Communications, WWI recently vacated the 2 GHz band for four of these links, leaving 128 links remaining to be cleared. Of these 128 links:

- 54 links are in the A block;
- 44 links are in the B block;
- 30 links are in the C block;
- in 39 links, one of the A or C paths also operates in the U block;
- in 39 links, one of the A or B paths also operates in the D or E block;
- and
- 50 spurs operate in the 2.1 GHz band not under consideration at this time.

10. In designing its communications system, it was imperative that WWI assume that even a brief loss of communications could lead to an unacceptable loss of control of pipeline pressures and flow volumes that could jeopardize safety and service reliability. Today, this complex network is extremely reliable.

11. As a 2 GHz incumbent licensee, WWI previously submitted Comments and Reply Comments in this docket regarding the Commission's proposal to adopt a

cost-sharing plan to distribute relocation costs more equitably among PCS licensees.

In its Comments, WWI supported the Commission's efforts to establish a cost-sharing plan and -- in response to attempts by PCS interests to disturb the basic relocation framework -- expressed its approval and support of the existing negotiation rules.

Moreover, WWI suggested in its Reply Comments that cost-sharing rights should be accorded not only to PCS relocators, but also to microwave incumbents that pay to relocate their own systems.

12. In its First Report and Order ("Order") adopted on April 25, 1996, the Commission approved a cost-sharing measure whereby PCS licensees that relocate microwave links may obtain reimbursement on a pro rata basis from later-entrant PCS licensees that benefit from the prior clearing of their spectrum. The Commission also tentatively concluded in its accompanying Further Notice, as suggested by WWI, that microwave incumbents should be allowed to obtain reimbursement rights and collect reimbursement under the cost-sharing plan from later-entrant PCS licensees. Lacking a complete record on this issue, however, the Commission sought comments regarding how to provide incumbents who participate in the cost-sharing plan with incentives to minimize relocation costs. The Commission also asked whether incumbents should be treated as if they were the initial PCS relocators for purposes of the cost sharing formula. Further Notice at ¶ 99.

13. While the Commission's Order also amended and clarified certain of the Commission's 2 GHz microwave relocation rules, the Commission declined to use this proceeding as an opportunity to radically alter the relocation framework for A and B block licensees. Most notably, the Commission determined that shortening the voluntary negotiation period for A and B block licensees would not be in the public interest because it could interrupt ongoing negotiations and inadvertently delay the relocation process. Order at ¶ 13. Notwithstanding this conclusion, the Commission requested comment in its Further Notice on whether it should shorten the voluntary negotiation period by one year and lengthen the mandatory negotiation period by one year for PCS licensees in the C, D, E and F blocks. Further Notice at ¶¶ 94-97.

III. COMMENTS

A. Microwave Incumbents Should be Entitled to Participate in the Cost-Sharing Plan Under the Same Terms as Initial PCS Relocators.

1. Microwave Incumbents Should Have Cost-Sharing Rights.

14. WWI is pleased that the Commission has proposed to adopt WII's recommendation that microwave incumbents be allowed to participate in the cost-sharing plan. As WWI noted in its Reply Comments, reimbursement rights under the cost-sharing plan are particularly crucial to the owners of large microwave systems, such as WWI. Because selected link-by-link relocations raise numerous technical and operational concerns for WWI, a system-wide relocation solution is required. Participation in the cost-sharing plan would facilitate WWI's efforts towards a coordinated relocation that protects and preserves its operations.

15. WWI's pipeline communications systems have enabled it to develop a long history of safe and reliable transportation of natural gas throughout the country. To maintain the safety of its existing system while transitioning to a new, equally safe replacement system, WWI must relocate the entire system at one time and in the most coordinated and manageable manner possible. Accordingly, as WWI discussed in its earlier Comments, it is currently seeking to negotiate a coordinated relocation plan, under the voluntary negotiation framework, with numerous PCS licensees.

16. During the negotiations, however, it has become apparent that some PCS licensees may decline to participate at this time in a coordinated relocation of WWI's system because their deployment schedules do not require displacement of WWI's links in their licensed territories until much later dates. Their current reluctance to participate in a system-wide, cost-sharing effort may deprive WWI of the opportunity to receive a pro-rated contribution from them for its overall system relocation costs. As a result, several of WWI's links may be "stranded" until such time as subsequent PCS licensees opt to relocate them.

17. Nevertheless, if WWI is successful in obtaining contributions from most but not all affected PCS licensees, it may be required to relocate all of its links now, including the stranded links. The licenses for the stranded links may be deemed cancelled, however, pursuant to Section 94.53 of the Commission's rules (Discontinuance of Station Operation), before the subsequent PCS licensee seeks to

deploy its system. 47 C.F.R. 94.53. Therefore, under existing rules, WWI would not be able to seek reimbursement from the subsequent PCS licensee for its costs of relocation, even though that PCS licensee directly benefitted from the relocation. If, on the other hand, WWI were entitled to the same type of cost-sharing rights as PCS licensees, it could relocate its entire system at once without being required to suffer all of the costs of doing so.

18. In instances where a microwave incumbent relocates a link as a result of PCS deployment, but compensation from an affected PCS licensee is not immediately available, that microwave incumbent should be entitled to retain its reimbursement rights vis-a-vis subsequent PCS licensees. In such an event, the microwave incumbent should have the right to receive compensation from the affected PCS licensee at the time the PCS licensee implements its PCS system in a way that would have interfered with the microwave link had the decommissioned link been operational.

19. In short, microwave incumbents should be eligible for the same type of protection granted to PCS licensees under the Commission's recently-adopted PCS cost-sharing measure. Participation by incumbents in the cost-sharing plan will facilitate the prompt deployment of PCS and will preserve the rights of incumbents by placing the ultimate responsibility for relocation costs on the party that necessitates them. Furthermore, it will promote system-wide relocations of microwave networks.

2. Under the Cost-Sharing Formula, Incumbents Should be Treated Comparably to Initial PCS Relocators That Relocate Non-Interfering Links.

20. WWI further believes that the Commission's concerns regarding how to provide microwave incumbents participating in the cost-sharing plan with incentives to minimize costs will be fully addressed by treating incumbents in the same manner as initial PCS relocators who relocate links that are outside their geographic market areas or licensed frequency bands (i.e., non-interfering links). Specifically, incumbents should be entitled to full reimbursement for actual, substantiated costs covered by the cost-sharing formula, subject to a monetary cap.

21. Under the cost-sharing plan adopted by the Commission, initial PCS relocators who relocate links that do not pose an interference problem to their own systems and that benefit other PCS licensees are entitled to full reimbursement of compensable costs up to the monetary cap. Order at ¶ 74; Order, Appendix A at ¶ 16. Like initial PCS relocators who relocate non-interfering links, incumbents who relocate their own microwave links should be entitled to full reimbursement from later-entrant PCS licensees whose systems would have interfered with the relocated links. In this way, the costs of relocation will ultimately rest with the party that necessitated them. Any other result would be inconsistent with the Commission's basic goal of compensating incumbents for costs incurred in relocating to new spectrum.

22. For purposes of the cost-sharing formula, microwave incumbents should be entitled to reimbursement only for "actual relocation costs." Such costs include, for example: radio terminal equipment; towers and/or modifications; back-up power equipment; monitoring or control equipment; engineering costs; installation; systems testing; and transaction expenses that are directly attributable to the relocation, subject to a cap of two percent of the "hard" costs involved. Order, Appendix A at ¶¶ 20-21. By requiring incumbents to document these costs to a neutral administrator, the Commission could ensure that microwave incumbents that relocate their own systems would obtain reimbursement only for their reasonable relocation costs.

23. Furthermore, like PCS relocators, microwave incumbents could be subject to a cap on reimbursement of \$250,000 per link, plus an additional \$150,000 if a new or modified tower is required. In concluding that such a cap was appropriate for purposes of the PCS cost-sharing measure, the Commission noted that it would protect future PCS licensees from being required to contribute to excessive relocation expenses that may include hidden premiums. Order, Appendix A at ¶ 27. Likewise, a cap on reimbursement would prevent microwave incumbents from obtaining excessive compensation for the costs of relocation.

B. The Voluntary Negotiation Period Should Not be Shortened for PCS Licensees in the C, D, E and F Blocks.

24. The Commission recognized in its Order that it would be ill-advised to shorten the voluntary negotiation period at this stage for PCS licensees in the A and B blocks. Order at ¶ 13. Elaborating on this point, Chairman Hundt, in a Separate Statement regarding the Order and Further Notice, expressed concerns regarding the Commission's proposal to shorten the voluntary negotiation period for the C, D, E and F PCS spectrum blocks. In particular, Chairman Hundt stressed that the 2 GHz microwave band supports essential services to the public and "question[ed] whether the public interest would be served by adjusting [C, D, E and F block] negotiation periods and altering the expectations of the parties at this time." Statement of Chairman Reed Hundt (April 25, 1996) at 2.

25. As discussed in greater detail below, WWI shares the concerns of Chairman Hundt that shortening the voluntary negotiation period for the C, D, E and F blocks will cause disruption to essential communications services. Under existing negotiation rules, WWI has vacated four links in its system through voluntary agreement and has been proceeding steadily toward an agreement for the voluntary relocation of many additional links. Voluntary negotiations conducted by numerous other microwave incumbents and PCS licensees in the A and B blocks have met with similar success. Accordingly, there is no reason for the Commission to alter the existing negotiation framework at this time. It appropriately balances the interests of

all parties and provides flexibility to resolve particular relocation negotiations based on the unique facts presented.

1. Adjusting the Negotiation Timetable Would be Disruptive to C Block Relocations.

26. Shortly after the Commission adopted its Further Notice on April 25, 1996, the PCS auction for licenses in the C block came to a close. As Chairman Hundt noted in his Statement, "C block applicants had advance notice of the relocation rules and have presumably taken them into account in their bidding." Statement of Chairman Reed Hundt (April 25, 1996) at 2. Moreover, C block microwave incumbents have relied on the existing relocation rules in developing their own business plans. *Id.* Therefore, the Commission's concern that shortening the voluntary negotiation period would thwart parties' reasonable expectations and disrupt ongoing negotiations in the A and B blocks applies with equal force to the C block PCS spectrum.

27. On a practical level, altering the negotiation framework for C block relocations may impede the efforts of microwave incumbents to achieve smooth, timely and complete transitions to new spectrum. As noted above, WWI has been engaged in voluntary negotiations with several PCS licensees to relocate its extensive microwave network on a coordinated basis. A number of links in the A, B and C blocks are implicated in these negotiations. Experience has shown that particularly where large systems such as WWI's are involved, attaining a relocation agreement

through voluntary negotiations may be an extremely time consuming -- but critically important -- process.

28. In many instances, one year simply may not provide the parties with adequate time to consummate their negotiations. Moreover, as the close of the one-year voluntary period neared, PCS licensees would have little incentive to complete the negotiations that they initiated voluntarily. Similarly, PCS licensees may avoid entering agreements to relocate A, B and C block links at one time because they hope to attain more favorable terms by postponing negotiations regarding C block links until after the one-year voluntary negotiation period has expired. This type of maneuvering can and should be discouraged by the Commission.

2. The Commission Should Retain the Two-Year Negotiation Period for D, E and F Block PCS Spectrum.

29. Notwithstanding the fact that auctions for the D, E and F blocks have not yet commenced and relocation negotiations are not underway, some of the same concerns that were noted above with respect to C block licenses warrant retention of the two-year voluntary negotiation period for the D, E and F blocks.

30. To begin with, under a shorter voluntary negotiation period, parties may not have adequate time to negotiate complex agreements for the relocation of extensive microwave networks. Additionally, PCS licensees could, in essence, nullify the voluntary period by waiting until after one year has elapsed before approaching

microwave incumbents with any offers of compensation. Such a subversion of the Commission's negotiation rules would deprive microwave incumbents of some of the fundamental protections that the Commission initially sought to confer upon them by allowing resolution of the relocation negotiations on a voluntary basis.

3. Any One-Year Voluntary Negotiation Period Imposed by the Commission Should Not Commence Until a Good Faith Offer of Compensation Has Been Made by the PCS Licensee.

31. Should the Commission decide to shorten the voluntary negotiation period to one year for C, D, E and/or F block PCS licensees, it should -- at the very least -- make the commencement of the voluntary period for each negotiation contingent upon a bona fide offer of compensation by a PCS licensee. In other words, the voluntary negotiation period for a particular relocation should not begin until the PCS licensee has approached the microwave incumbent and initiated good faith negotiations. This safeguard would be necessary to prevent PCS licensees from undermining the negotiation framework by simply "waiting out" the voluntary period before initiating negotiations; as such, it would promote the Commission's goal of ensuring a meaningful period of voluntary negotiations for all 2 GHz microwave relocations.

IV. CONCLUSION

32. WWI applauds the Commission's proposal to allow microwave incumbents to participate in the PCS cost-sharing plan. By treating such incumbents comparably to initial PCS relocators for purposes of the cost-sharing formula, the Commission would provide incumbents with an incentive to minimize their relocation expenses. WWI also urges the Commission to reconsider its proposal to shorten the voluntary negotiation period for C, D, E and F block licensees. The existing two-year voluntary period is necessary to ensure that the parties have a meaningful opportunity to negotiate voluntary relocation agreements.

WHEREFORE, THE PREMISES CONSIDERED, Williams Wireless, Inc. respectfully submits the foregoing Comments and urges the Federal Communications Commission to act in a manner fully consistent with the views expressed herein.

Respectfully submitted,

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